JD(SF)-37-03
Los Angeles, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNIONS 102 AND 105 (COMFORT CONDITIONING CO., INC.)

and **Case No. 21-CB-13138**

JACK DRESSER, an Individual

Lisa E. McNeill, Atty., (Region 21) of Los Angeles, California, Counsel for the General Counsel
Christina C. Bleuler, Atty., Wylie, McBride, Jesinger, Platten & Renner, San Jose, California, Counsel for Respondent.

DECISION

Statement of the Case

LANA H. PARKE, Administrative Law Judge. This case was tried in Los Angeles, California on April 2, 2003. Pursuant to charges filed by Jack Dresser, an individual, (Mr. Dresser), the Regional Director of Region 21 of the National Labor Relations Board (the Board) issued a Complaint and Notice of Hearing (the complaint) on December 17, 2002.[1] The complaint alleges that Sheet Metal Workers' International Association, Local Unions 102 and 105 (Respondent)[2] violated Section 8(b)(1)(B) of the National Labor Relations Act (the Act) by restraining and coercing Comfort Conditioning Co., Inc. (the Employer) in the selection of its representatives for the purpose of collective bargaining or adjustment of grievances.

ISSUES

1. Are the charges herein barred by Section 10(b) of the Act?
2. Was Mr. Dresser a representative of the Employer for the purpose of collective bargaining or the adjustment of grievances within the meaning of Section 8(b)(1)(B) of the Act at the time Respondent preferred and processed internal union disciplinary charges and imposed a fine against him?
3. Did Respondent either have or seek to have a collective-bargaining relationship with the Employer.
4. Did Respondent violate Section 8(b)(1)(B) of the Act by preferring and processing internal union disciplinary charges and imposing a fine against Mr. Dresser?

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[1] All dates are in 2001 unless otherwise indicated.

[2] Effective December 2001, Sheet Metal Workers' International Association, Local Unions 102 and 108 merged to form Local 105, (respectively, Local 102, 108, and 105.)

On the entire record[3] and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. Jurisdiction

The Employer, a California corporation, with its principal office located in Corona, California, is engaged in business as an air conditioning contractor for commercial construction projects. During the representative twelve-month period prior to March 20, Respondent provided services valued in excess of $50,000 to enterprises within the State of California, including the Los Angeles Unified School District (LAUSD), each of which enterprises, within the same period of time, purchased and received goods valued in excess of $50,000 directly from points outside the State of California.[4] I find the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and Respondent is a labor organization within the meaning of Section 2(5) of the Act.[5]

II. Alleged Unfair Labor Practices

A. Gardena High School construction project

Since its inception in July 2000, the Employer has had no direct collective-bargaining relationship with Respondent or any other union. In August 1999, various construction contractors and building trades unions in the Los Angeles area entered into a Project Stabilization Agreement (PSA). The parties to the PSA, including Local 108, agreed that contractors performing work on projects for LAUSD would provide their employees with the wages and fringe benefits set by the applicable construction trade master agreement and make required contributions to the union trust funds. The PSA did not require any contractor to be union signatory, but it bound contractors to the "terms, conditions and provisions of the Standard Form of Union Agreement and Addenda Thereto between [Local 108] and Sheet Metal and Air Conditioning Contractors' National Association, Los Angeles Chapter…(the 'Master Agreement')" for the period of the individual contractor's LAUSD project.

In late 2000, the Employer contracted to provide mechanical heating, ventilation and air conditioning (HVAC) construction services to Reza, Inc., the general contractor for construction work at Gardena High School, a school within the LAUSD (the Gardena High project.) On January 19, Luther Medina (Mr. Medina), Local 108's field investigator met with Mary Ann

[3] Counsel for the General Counsel's unopposed post-hearing motion to correct the transcript is granted except as to the requested correction of page 108, line 8, which counsel inadvertently miscited. The motion and corrections are received as Administrative Law Judge exhibit 1.

[4] Although Respondent denied in its answer, for lack of knowledge, that the Employer met the Board's jurisdictional standards, an "Interstate Commerce Stipulation" signed by the Employer's president was received in evidence without objection.

[5] Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, and/or unchallenged credible evidence.

Evans (Ms. Evans) and Gary Evans (Mr. Evans), explained the Employer's obligations under the PSA, and obtained Ms. Evans' signature on the requisite subscription agreement binding the Employer to the PSA and, by extension, to the Master Agreement.[6] The Gardena High project continued until August 2002.

B. Internal union disciplinary action against Mr. Dresser

Respondent's Constitution at Article 17, Section 1(g) prohibits members from "…performing any work covered by the claimed jurisdiction of the [union] for any employer…that is not signatory to or bound by a collective bargaining agreement with an affiliated local union of this International Association, unless authorized by the local union." In late 2000, Mr. Dresser, who had been a member of Local 102 since 1989, applied for a withdrawal card, which he received some time later.[7]

Since the PSA required employees to become "temporary" Local 108 members, Mr. Medina met with Mr. Evans, Mr. Dresser and Dave Evans at the Gardena High jobsite on February 6 and gave the two employees journeyman applications and benefit cards to fill out. Mr. Dresser did not tell Mr. Medina he was, or had been, a Local 102 member and left blank the application questions, "Are you a former member of the Sheet Metal Workers' International Association?" and "If so, what was the last Local Union?"[8] Following this meeting, on February 7, Mr. Medina suggested to Richard Marquez (Mr. Marquez), Local 102 organizer, that he explore organizational possibilities with the Employer as its offices were located in Local 102's jurisdiction. Mr. Marquez did not follow up on the suggestion at that time.

A short time later, pursuant to Respondent's trust fund performing a social security number cross-reference of Mr. Dresser's application, Local 102 business manager, Lance Clark (Mr. Clark) and business agent, Phil Cohan (Mr. Cohan) found out that Mr. Dresser, a union member, was working for the Employer. Learning that Mr. Clark and Mr. Cohan planned to file internal union charges against Mr. Dresser for working for a nonunion contractor, Mr. Marquez asked them first to permit him to talk to Mr. Dresser, whom he had known from the union apprenticeship program. He saw in the situation "a viable option not only to…help out [Mr.] Dresser as an individual, but to help out the local Union as an organizer."

[6] The Employer's Corona office was located in Local 102's jurisdiction, but the Gardena High project was located in Local 108's jurisdiction. Therefore, Mr. Medina was responsible for servicing the project. Under the terms of the PSA, however, Local 108 was prohibited from organizing the Employer.

[7] No party suggests that a withdrawal card would, under Respondent's constitution, permit its possessor to work for a nonunion employer or that Mr. Dresser's withdrawal constituted an effective resignation of union membership.

[8] There was conflicting testimony about whether that portion of Mr. Dresser's application had a slash mark through it when presented to him, indicating that it need not be filled out. I find it unnecessary to resolve the conflict.

Later at the Gardena High project, Mr. Marquez told Mr. Dresser of the imminent union charges. Mr. Dresser contended that he was no longer a member of Local 102 because he had applied for and received a withdrawal card. Mr. Marquez advised Mr. Dresser to reinstate his membership card and raised the possibility of a salting agreement as a solution to the dilemma.[9] Thereafter, Mr. Dresser applied for reinstatement of his union membership card.

In late February, in a telephone conversation with Ms. Evans about Mr. Dresser, Mr. Medina told her that Mr. Dresser was in trouble because he was a union member working for a non-signatory contractor. He told her that Mr. Dresser would be in more trouble if he continued working there. He assured Ms. Evans the Employer had not violated any union rule and asked if Ms. Evans would meet with Mr. Marquez to find out what the union had to offer the Employer.

In April, Mr. Marquez met with Mr. and Ms. Evans at Local 102's Corona office and pointed out advantages in the Employer's becoming a union signatory contractor. The meeting was amicable, but the Evans declined to sign a union contract at that time. Following this meeting, Mr. Marquez reported to Mr. Clark that the Employer had refused to sign a contract. Mr. Marquez asked for additional time to talk to Mr. Dresser before charges were preferred to persuade him to leave the Employer. Mr. Marquez hoped to accomplish two goals: to avoid union discipline of Mr. Dresser and to encourage the Employer to talk about a contract under threat of losing a skilled employee. Mr. Marquez thereafter contacted Mr. Dresser, told him that the Employer had refused to sign a contract and that he needed to leave the Employer to avoid a union fine. Mr. Dresser did not terminate his employment with the Employer.

Later in April, Mr. Dresser met with Mr. Marquez, Mr. Clark, and Mr. Cohen. Mr. Dresser said he wanted to continue working for the Employer and asked how he could resolve his problem with Local 102. He pointed out that the Employer was signatory for the Gardena High project where he worked and that he was paying for membership in both Locals 102 and 108. Although no evidence was presented as to Local 102's response, clearly Respondent did not approve Mr. Dresser's continued employment with the non-signatory Employer.

On May 22, Mr. Cohan filed internal Local 102 charges against Mr. Dresser alleging a violation of Local 102's Constitution and Ritual by working for the Employer, a non-signatory contractor. Oh July 16, Local 102 conducted an internal union trial of the charges. In a letter submitted as evidence in the trial, Mr. Medina stated that he had told Mr. Dresser he "personally did not have a problem with [Mr. Dresser] working [for the Employer] as long as he had the ok from Local 102 and was open and honest with his intentions about working for [the Employer] and possibly helping [Mr. Marquez] in an attempt to organize [the Employer]." Mr. Dresser stated on the trial summary sheet, "Misled into believing Local 102 would stand behind me. Economic demands precede union laws & constitution." Following the trial, on July 30, Local 102 notified Mr. Dresser he had been found guilty of the charges and fined $35,000. On August 27, Mr. Dresser appealed the trial committee's findings to the international union. On January 15, February 22, and March 19, 2002, respectively, Mr. Dressed filed with the Board an initial and two amended charges against Respondent.

[9] Under a salting agreement, a union considers a member to be an organizer of the nonunion employer and thereby protected against the union constitutional consequences of working for a nonsignatory company.

By letter dated March 13, 2002, Michael Sullivan, general president of the international union, notified Mr. Dresser that the fine against him was reduced to $10,000 and instructed him to pay that amount to Respondent.

C. Mr. Dresser's position with the Employer

Ms. Evans and Mr. Evans, respectively, are the Employer's president and vice-president. Ms. Evans, who described the business as "very small," handles the financial, administrative, and personnel aspects of the business while Mr. Evans does job bidding and estimating. Both are "very active" in overseeing the Employer's projects. Mr. Evans hired Mr. Dresser because he was a skilled HVAC journeyman. Mr. and Ms. Evans assigned Mr. Dresser as jobsite foreman on the Gardena High project. They also employed Mr. Evans brother, Dave Evans, whom Mr. Dresser was expected to teach "the ropes." At the Gardena High project, Mr. Dresser was responsible for HVAC construction layout and installation, for construction coordination with the general and other contractors, and for cost oversight. The Employer paid Mr. Dresser nearly double the contract journeyman rate and provided him with a cell phone and a Home Depot credit card.

Mr. Dresser signed employee time cards for the Gardena High project and faxed copies to Ms. Evans who handled payroll. When Mr. Dresser informed Ms. Evans that HVAC work lagged at the project, Ms. Evans telephoned Respondent's hiring hall dispatcher and requested additional workers, specifying the length of time they were expected to work. Workers dispatched to the jobsite reported to Mr. Dresser who gave them an employment package and copied necessary identification documents such as driver's licenses and social security cards.[10] For the most part, when dispatched employees concluded the work for which they were hired, Mr. Dresser notified Ms. Evans who prepared the final paycheck. As to one of the dispatched workers, Mr. Dresser reported to Ms. Evans that he did not have the experience needed to install ductwork. Ms. Evans contacted Respondent's hiring hall, told the dispatcher that the employee had not worked out, and requested someone else.[11] Mr. Dresser reported tool needs to Ms. Evans; she oversaw tool safety issues. Mr. Dresser notified Ms. Evans when the work was at a stage where a subcontractor could be scheduled; either Ms. Evans or Mr. Dresser then scheduled the subcontractor. Employee requests for time off were informally submitted to Mr. or Ms. Evans.

Mr. Dresser assigned job tasks and work areas to employees based on construction layouts he designed. He determined work shift start and end times, depending largely on what areas were ready and/or available for HVAC construction. If necessary, he also showed employees how to operate tools properly, scheduled equipment delivery, purchased tools and supplies as needed, and conducted weekly safety meetings

[10] Counsel for the General Counsel refers to this process as Mr. Dresser having "hired" employees. However, Mr. Dresser neither interviewed nor made a selection decision as to any dispatched employee. I cannot find that Mr. Dresser hired any employee or was responsible for or even involved in any employment process.

[11] Counsel for the General Counsel refers to this process as Mr. Dresser having "terminated" employees. However, except for one employee, all employment terminations were pro forma, requiring no particular decision making aside from assessing whether their work was completed. As to the one replaced employee, credible evidence shows that Mr. Dresser only reported his lack of qualification to Ms. Evans who otherwise handled the replacement. I cannot find that Mr. Dresser fired any employee or was responsible for doing so.

Sometime in December 2001, an employee complained that he had been shorted in overtime pay. Mr. Dresser notified Ms. Evans who corrected the employee's pay. According to Ms. Evans, had a dispute arisen as to the correct pay, she would have talked directly to the complaining employee. Mr. Dresser fielded other complaints from employees at the Gardena High project, including those relating to malfunctioning equipment, theft, and vandalism. Mr. Dresser handled such complaints, as appropriate, by replacing equipment, requesting that the general contractor fence off the Employer's work area, and identifying a high school "tagger" to the general contractor. Although no grievance ever arose between the Employer and any employee regarding contractual terms under the PSA, should such occur, Ms. Evans anticipated she would be the person to handle any charge, grievance or dispute, probably with the assistance of outside legal counsel. With regard to discussions between Mr. and Ms. Evans and union representatives concerning collective-bargaining matters, Mr. Dresser was neither involved nor consulted as to the Employer's position.

D. The Section 10(b) Issue

Respondent argues that Mr. Dresser did not timely file the charges herein, noting the union internal charges were filed on May 22, while the initial unfair labor practice charge was not filed until January 15, 2002. The General Counsel points out that Local 102 did not notify Mr. Dresser of the fine until July 30 and that further actions related to the internal union discipline occurred thereafter, all within the 10(b) period. Since, as Counsel for the General Counsel accurately contends, Section 10(b) does not begin to run until the conclusion of the internal union appeal process,[12] the instant charges are timely.

E. Discussion of alleged unfair labor practices

The General Counsel does not contest the legality of Respondent's constitution or its right, generally, to fine union members who work for non-union signatory employers. The parties agree that in order for an 8(b)(1)(B) violation to exist herein, it must be shown that Mr. Dresser was, at relevant times, an 8(b)(1)(B) representative of the Employer and that Local 102 either had or was seeking a collective bargaining relationship with the Employer.

Section 8(b)(1)(B) of the Act provides:

> (b) It shall be an unfair labor practice for a labor organization or its agents—
> (a) to restrain or coerce…(B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.

In *NLRB v. International Brotherhood of Electrical Workers Local 340 (Royal Electric),* 481 U.S. 573, 586 (1987), the Supreme Court concluded that "discipline of a supervisor member is prohibited under Section 8(b)(1)(B) only when that member is engaged in Section 8(b)(1)(B) activities – that is, collective bargaining, grievance adjustment, or some other closely related activity (e.g. contract interpretation, as in *Oakland Mailers* [citation omitted]). The Board, citing *Florida Power & Light Co. v. Electrical Workers IBEW Local 641,*[13] further explained that "Section 8(b)(1)(B) prohibits union discipline of supervisor-members only when: (1) the supervisor-member being disciplined is a 'representative[s] for the purposes of collective bargaining or the adjustment of grievances' and (2) the union's sanction may have a

[12] *Sheet Metal Workers (Cabell),* 316 NLRB 504, FN 1 (1995).
[13] 417 U.S., 790, 804-805 (1974)

foreseeable adverse effect on the future performance of 8(b)(1)(B) activities by the supervisor-member." *Local No. 10, International Union of Elevator Constructors, AFL-CIO (Thyssen General Elevator Company),* 338 NLRB No. 83, at slip op. 2 (2002). Further, as the Board explained in *International Brotherhood of Electrical Workers, Local 494*, *et al. (Gerald Nell, Inc.*):[14]

> [T]o violate Section 8(b)(1)(B) a union must, at a minimum, either have a collective-bargaining relationship with an employer, or at least be seeking to have such a relationship. As the Court explained in Royal Electric, a union has no incentive to affect a supervisor-member's performance of collective-bargaining or grievance adjustment duties, or to influence an employer's choice of representative, in the absence of either a collective-bargaining relationship or a desire to establish such a relationship. The Board has recognized that the requirement that a union must be "seeking" a collective-bargaining relationship (when no on-going collective-bargaining relationship exists) is to be interpreted narrowly. See *Carpenters District Council of Dayton (Concourse Construction Co.),* 296 NLRB 492, 493 (1989). Further, "[t]here must be evidence not only of an actual intent to seek recognition, but the union must currently be seeking recognition." Id. at 493.

Addressing the issue of whether Respondent either had or sought to have a collective-bargaining relationship with the Employer, I find the General Counsel has established that element. Prior to the union disciplinary proceedings against Mr. Dresser, Respondent made overtures to Mr. Dresser to serve as a "salt" and met with Mr. and Ms. Evans to discuss the Employer becoming union-signatory. While Respondent styles its conduct as attempts to avoid union discipline of Mr. Dresser and while that altruistic purpose may also have existed, Respondent evinced a clear organizational intent. Further, Respondent's organizational intent continued at least until Respondent filed internal union charges against Mr. Dresser. As Mr. Marquez disclosed, Respondent hoped to encourage the Employer to negotiate under threat of losing a key employee, and Mr. Medina stated his unconcern with Mr. Dresser's working for the Employer if he helped in Local 102's attempt to organize the Employer. There is no evidence that Respondent abandoned its hope of persuading the Employer to negotiate even though it ceased direct overtures. It is reasonable to assume that Respondent's organizational purpose continued unabated and that the Respondent continued to hope that Mr. Dresser's dilemma might yet prompt the Employer to become union signatory. Moreover, Respondent had at least a quasi-bargaining relationship with the Employer in that the Employer was signatory through the PSA to the terms and conditions of the Master Agreement for the Gardena High project. Accordingly, I conclude that at relevant times, Respondent either had a collective-bargaining relationship with or sought recognition from the Employer.

It remains to determine if Mr. Dresser was the Employer's representative for the purposes of collective bargaining or the adjustment of grievances. Section 2(11) of the Act defines a "supervisor" as any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if the exercise of such authority is not of a merely routine or clerical

[14] 332 NLRB No. 112, at slip op. 2 (2000), review granted *Podewils v. N.L.R.B.,* 274 F. 3d 536 (2001).

nature, but requires the use of independent judgment. "The possession of even one of those attributes is enough to convey supervisory status, provided the authority is exercised with independent judgment, not in a merely routine or clerical manner." *Arlington Electric, Inc.,* 332 NLRB 74 (2000), quoting *Union Square Theatre Management,* 326 NLRB 70, 71 (1998).

Mr. Dresser's job title at the Gardena High jobsite was foreman, but the Board cautions that an individual's title alone cannot establish whether that individual is a supervisor. *Pan-Osten Co.,* 336 NLRB No. 23 (2001). Mr. Dresser had no responsibility for the hire, transfer, suspension, lay off, recall, promotion, discharge, reward, or discipline of employees at the Gardena High project. The only indicium of supervisory status rests on his authority to assign and direct employees. There is no question that Mr. Dresser made work assignments to employees performing the HVAC work at the jobsite. It does not matter, contrary to Respondent's argument, that the only employees under Mr. Dresser's oversite were one permanent employee and occasional temporary employees. What does matter is whether Mr. Dresser's work assignments involved independent judgment and not merely routine or clerical decisions. That is the crucial question in determining his supervisory status. As the United States Supreme Court noted, "The statutory term 'independent judgment' is ambiguous with respect to the *degree* of discretion required for supervisory status...It falls clearly within the Board's discretion to determine, within reason, what scope of discretion qualifies."[15] The Board is careful not to give too broad an interpretation to the statutory term "independent judgment" because supervisory status results in the exclusion of the individual from the protections of the Act. *Tree-Free Fiber Co.,* 328 NLRB 389 (1999).

Mr. Dresser had sole responsibility for assigning the work required to implement his HVAC layouts. He determined when additional employees were needed and what work they were to perform. As scheduling or construction needs dictated, he reassigned employees. I recognize that the question of Mr. Dresser's supervisory status is close. The Board has found that employees who direct, assign, and make up work schedules of other workers do not necessarily possess "supervisory independent judgment."[16] However, Respondent's argument that Mr. Dresser was "simply a skilled journeyman, working with an unskilled individual" ignores the fact that Mr. Dresser developed the Gardena High project's plans and layouts and exercised full and independent judgment as to how, when, and by whom his plans and layouts were effected. "The possession of even one of [the section 2(11)] attributes is enough to convey supervisory status, provided the authority is exercised with independent judgment, not in a merely routine or clerical manner." *Union Square Theatre Management,* 326 NLRB 70, 71 (1998); *Pepsi-Cola Co.,* 327 NLRB 1062 (1999). Since Mr. Dresser used independent judgment in responsibly directing employees at the Gardena High project, I find he was the Employer's supervisor there.

However, supervisory status alone does not make Mr. Dresser an 8(b)(1)(B) representative of the Employer, which is the determinative question herein. Although Mr. Dresser served as the Employer's Gardena High jobsite supervisor, Mr. and Ms. Evans otherwise closely managed and controlled the Employer. Counsel for the General Counsel argues that Mr. Dresser resolved jobsite complaints and was, thus, a grievance adjuster within the meaning of 8(b)(1)(B). There is no justification for such an inference. Mr. Dresser resolved only minor work-related complaints on the jobsite, including notifying Ms. Evans of a paycheck

[15] NLRB v. Kentucky River Community Care, 121 S. Ct. 1861, 1867-1868 (2001).

[16] *Dean & Deluca New York, Inc.,* 338 NLRB No. 159, at slip Op. 2-3 and FN 15 (2003). See also *Arlington Electric, Inc.,* 332 NLRB 74 (2000) where work assignment pursuant to plans and schedules developed by another, fails to establish statutory supervisor status.

discrepancy, replacing defective equipment, addressing safety problems, and reporting and finding solutions for theft and vandalism problems. Resolution of minor employee complaints or disputes, in the absence of participation in any formal grievance procedure, confers neither supervisory status[17] nor 8(b)(1)(B) representative status.[18] There is no evidence that Mr. Dresser would have handled any significant grievance or one involving the PSA terms. Rather, the evidence is that Mr. or Ms. Evans would address any such problem. Mr. Dresser had no role in the Employer's signing the PSA, and there is no evidence that he was familiar with its terms. Mr. Dresser was neither involved with any of the Employer's interactions with Local Unions 102 and 108, nor was he consulted. The evidence does not support a conclusion that Mr. Dresser was the Employer's 8(b)(1)(B) representative when Respondent processed intraunion disciplinary charges against him.[19]

The General Counsel also argues that Respondent's true motive in instituting intraunion discipline against Mr. Dresser was to pressure him to organize for Respondent, which is coercive of the Employer. While, as noted above, Respondent hoped the discipline would move the Employer to sign an agreement and while that shows Respondent sought a collective-bargaining relationship with the Employer, it does not establish a violation of Section 8(b)(1)(B) of the Act. While Respondent would not have preferred charges against Mr. Dresser if it had been successful with its organizational designs on the Employer, that shows only a lawful reality. See *Podewils,* supra at FN 6. There is no evidence that Respondent retaliated against Mr. Dresser for failing and refusing to help organize the Employer, and there is no basis for supposing that such evidence would overcome the fact that Mr. Dresser was not an 8(b)(1)(B) representative of the Employer. *Veco, Inc.,* supra, relied on by Counsel for the General Counsel in making this argument, is inapposite as the disciplined supervisor in that case was an 8(b)(1)(B) representative, which Mr. Dresser is not. In both *Veco* and the instant case, the 8(b)(1)(B) representative status of the disciplined employee is pivotal.

Mr. Dresser retained his union membership while serving as the Employer's supervisor but not as its 8(b)(1)(B) representative. As such, he incurred obligations to both the Union and the Employer.[20] As the Court explained in *Royal Electric*, an employer is not coerced in the selection of its representatives merely because a supervisor-member having dual loyalties may find the supervisory position less desirable when faced with the application of legitimate union rules.[21] Accordingly, I find that the General Counsel has not established the elements of an 8(b)(1)(B) violation and that Respondent did not violate the Act by its discipline of Mr. Dresser. It follows that the complaint must be dismissed in its entirety.

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[17] See *Greenhorne & O'Mara, Inc.***,** 326 NLRB 514, 517 (1998).

[18] See *Masters, Mates and Pilots, Marine Division, ILA (Marine Transport Lines),* 301 NLRB 526, 527 and FN16 (1991).

[19] *Electrical Workers Local 1547 (Veco, Inc.)* 300 NLRB 1065, 1065 (1990) is distinguishable from the instant matter. The grievance adjustment authority possessed by the supervisor in that case was evidenced by "specific instances of his resolution of employee grievances concerning wages in relation to the nature of work performed and grievances concerning unsafe equipment and work in certain weather conditions--types of disputes that would likely be contractual grievances if a collective-bargaining agreement was in effect."

[20] See *Podewils*, supra.

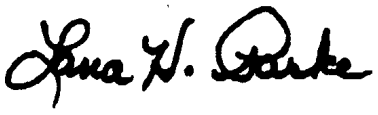
[21] 481 U.S. at 591-595.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[22]

ORDER

The complaint is dismissed.

Dated, at San Francisco, CA: May 27, 2003



Lana H. Parke
Administrative Law Judge

[22] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.